

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 2.44.301A, 2.44.305, 2.44.401,)	AMENDMENT AND REPEAL
2.44.515, 2.44.522, and 2.44.523,)	
and repeal of ARM 2.44.513)	
pertaining to Definitions, Optional)	NO PUBLIC HEARING
Retirement Program, Calculating)	CONTEMPLATED
Service Credits, Corrections of)	
Errors, Family Law Orders,)	
Withholding of Insurance Premium)	
from Retirement Benefit)	

TO: All Concerned Persons

1. On October 5, 2007, the Teachers' Retirement Board proposes to amend and repeal the above-stated rules.

2. The Teachers' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Teachers' Retirement System (TRS) no later than 5:00 p.m. on September 10, 2007, to advise us of the nature of the accommodation that you need. Please contact Rita Karnopp, Teachers' Retirement System, P.O. Box 200139, Helena, Montana 59620; telephone (406) 444-3754; fax (406) 444-2641; TDD/TTY (406) 444-1421; or e-mail rkarnopp@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.44.301A DEFINITIONS For the purpose of this chapter, the following definitions apply:

(1) remains the same.

(2) "Contingent beneficiary" means a beneficiary designated to receive payments if all primary beneficiaries are deceased. Contingent beneficiaries will be awarded benefits on a share-and-share-alike basis, unless specified otherwise on the member's designation form.

~~(2)~~(3) "Enrolled actuary" means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under Subtitle C of the Title III of the Employee Retirement Income Security Act of 1974.

(4) "Paraprofessional" means someone who provides instructional support which includes:

(a) one-on-one tutoring;

(b) classroom management, such as organizing instructional materials;

(c) instructional assistance in a computer laboratory;

(d) conducting parental involvement activities;

(e) a translator; or
(f) instructional support services under the direct supervision of a highly qualified teacher.

(5) "Primary beneficiary" means a beneficiary or beneficiaries designated to receive payments upon the death of an active, inactive or retired member, or alternate payee. Primary beneficiaries will be awarded benefits on a share-and-share-alike basis, unless specified otherwise on the member's designation form.

(3)(6) "Service credits" or "creditable service" means the number of years credited to a member's account for which contributions have been received as required by statute or rule.

(4)(7) "School term or school year" means the fiscal year July 1 through June 30.

AUTH: 19-20-201, MCA

IMP: 19-20-101, 19-20-204, 19-20-302, MCA

Reason: The terms "contingent" and "primary" beneficiaries are not defined in statute. However, contingent and primary beneficiaries are a fundamental component used to determine benefits; therefore, these terms are used in various administrative rules to identify potential and/or eligible benefit recipients and need to be clearly understood. HB 81 2007 regular session, clarified that paraprofessionals must be members of TRS. It is necessary to define "paraprofessionals" because some districts classify both their instructional and noninstructional support staff as "paraprofessionals".

2.44.305 OPTIONAL RETIREMENT PROGRAM FOR CERTAIN MEMBERS OF THE MONTANA UNIVERSITY SYSTEM (1) through (1)(c) remain the same.

~~(2) Members of the Montana university system, electing to participate in the optional retirement program, will not be eligible for retirement benefits under Title 19, chapter 4, parts 8 and 9 until they have terminated their employment.~~

~~(3) Retirees returning to employment within a unit of the university system and electing to participate in the optional retirement program will be reinstated to the status of an inactive vested member of the teachers' retirement system and their monthly benefit will be cancelled.~~

AUTH: 19-20-201, MCA

IMP: 19-20-302, 19-20-621, MCA

Reason: The substantive provisions of sections (2) and (3) were included in HB 81, of the 2007 regular session. The Montana Administrative Procedure Act prohibits unnecessary repetition of statute language in administrative rule.

2.44.401 CALCULATING SERVICE CREDITS (1) The basic period of time for calculating service credit shall be the ~~school term~~ fiscal year July 1 through June 30. ~~Service~~ Generally, service credit in the Montana Teachers' Retirement System shall be based upon the following unless otherwise provided by rule or statute:

~~(a) nine months or 180 days of full-time employment shall equal 1.0 year service credit for any employment eligible to be qualified under the teachers' retirement system.~~

~~(b) twelve months or 360 days in a school term shall equal 1.0 year service credit for military service qualified in the teachers' retirement system.~~

~~(c)(a)~~ Service credit for Public Employees' Retirement System service qualified in the Teachers' Retirement System shall be credited to the member's account at the same rate earned under and reported to the Public Employees' Retirement System.

~~(2)(b)~~ A member employed part-time less than full-time during the school term fiscal year shall receive part-time service credit based on the total full-time equivalent number of hours, days, or months verified by his employer reported to the Teachers' Retirement System, divided by the number of hours, days, or months reported of equivalent full-time service. For the purpose of this subsection, seven hours shall be considered one day.

~~(3)(2)~~ For employees of the university system and community colleges, part-time service credit shall be prorated based upon the portion of the full-time contract completed and/or the daily rate of pay if available.

AUTH: 19-20-201, MCA

IMP: 19-20-204, 19-20-401, 19-20-402, 19-20-403, 19-20-404, 19-20-405, 19-20-406, 19-20-407, 19-20-408, 19-20-409, 19-20-410, 19-20-411, MCA

Reason: The definition of full-time service was clarified in House Bill 63 amendments adopted in the 2007 regular session. The amendments propose to strike subsection (1)(b) because the provision is duplicated in ARM 2.44.402.

2.44.515 CORRECTION OF ERRORS ON CONTRIBUTIONS AND OVERPAYMENTS (1) through (3) remain the same.

~~(4) Interest shall accrue on contributions not reported or amounts overpaid to members at the actuarial assumed rate. Interest will accrue from the date the contributions were due, or the date the error occurred.~~

~~(5) If payment is received within 30 days of notification of the amount due, interest may be waived if less than \$5.00 or if the board finds that the error was caused by the teachers' retirement system.~~

AUTH: 19-20-201, MCA

IMP: 19-20-208, 19-20-716, MCA

Reason: Sections (4) and (5) are no longer necessary because HB 81 (2007) codified the process for correcting errors on contributions and overpayments.

2.44.522 FAMILY LAW ORDER -- CONTENTS AND DURATION (1) The board will make available to the public ~~a checklist of required and optional family law order (FLO) characteristics and representative model forms approved for inclusion in a proposed FLO~~ Family Law Order (FLO).

~~(2) A FLO may order the splitting and payment of the sums payable to specific participants from a retirement system. The term participant will be construed to include all possible appropriate participants unless specifically defined in the FLO. If specific participants are not named, retirement benefits or amounts payable to another upon the death of any and all participants will be allocated according to the terms of the FLO. Specific designations of participant(s) in a FLO may include:~~

~~(a) An individual "member" (active, inactive or retired).~~

~~(b) "Primary" and/or designated beneficiary(ies)" eligible to receive lump sum payment(s) upon the death of an active or inactive member of the system and "designated beneficiary" designated at the time of retirement to receive continuing retirement benefits upon the death of the retired member.~~

~~(3) Payments under a FLO must be the same type and form as, and for no greater amount or duration than, those available to any participant from the account being assigned. A benefit, option or payment available for another at the discretion of the participant may be subject to a FLO. Only the participant can be required to designate a specific option or request a refund. (For example, if a participant may choose a beneficiary, the FLO may require the participant to name a specific alternate payee as a beneficiary or require that a portion of the named beneficiary's payment be paid to the alternate payee.)~~

~~(4)(2) If benefits are currently payable to the participant(s), the FLO may specify a future effective date. However, however, no a FLO may not provide for payments to an alternate payee prior to the date on which the participant first becomes eligible for payment from the retirement system TRS.~~

~~(5) Unless otherwise specified in the FLO, payments to an alternate payee will continue only until benefits cease to be paid to any participant. Payments to an alternate payee may be further limited in the FLO to:~~

~~(a) the life of the participant whose payment rights are being transferred,~~

~~(b) a specified maximum time,~~

~~(c) the life of the alternate payee, or~~

~~(d) the life of a designated participant.~~

~~(6)(3) Two basic types of payment distributions are allowed to alternate payees: "defined sum fixed amount" and "proportionate payments actuarially equivalent benefit."~~

~~(a) A "defined sum fixed amount" must designate a specific total dollar amount to be paid to the alternate payee over a specified period of time, or a specified monthly amount payable for the life of the participant, neither of which can be greater than the total monthly benefit payable to the participant. in the form of a fixed dollar amount payable for a designated maximum number of months. (For example: "A sum of \$9,000 to be paid at a rate of \$150 per month for 60 monthly payments or until benefits cease, whichever comes first".) If the fixed monthly payment designated is more than the total monthly benefit or payment to the participant, the lesser amount will be paid, for the designated number of months or until any benefits cease. The defined sum, the designated monthly dollar amount, and the designated number of months will not be increased by subsequent conditions or events.~~

~~(b) "Proportionate payments" An "actuarially equivalent benefit" is payable for the life of the alternate payee. may be ordered by designating either a fixed percentage of benefits payable or a formula describing how the percentage must be calculated at the time payments begin. The fixed percentage must indicate a specific percentage of each payment to be paid to the alternate payee, either as a percentage or as a fraction for which the numerator and denominator are indicated. (For example: "50% of any withdrawal of member contributions.") A formula calculating a fixed percentage may use either years or dollar amounts to establish a proportionate benefit for an alternate payee. (For example: "a fixed percentage of benefits which is equal to 50% of 7 years divided by the total number of years of service used to calculate the participant's benefit" or "a fixed percentage of benefits which is described by dividing \$150 per month by the total monthly benefit amount payable for service retirement when participant's payments begin".) All proportionate payments to the alternate payee will include the same proportion of any guaranteed annual benefit allowance, cost of living allowance, post-retirement adjustment or similar increase payable to the participant in any month during which the FLO is in effect.~~

AUTH: 19-20-201, MCA
IMP: 19-20-305, MCA

Reason: The statute governing family law orders was significantly rewritten by the 2007 Legislature in HB 81. The changes are intended to eliminate language no longer necessary, and to clarify the standard formula for dividing benefits.

2.44.523 FAMILY LAW ORDERS -- APPROVAL AND IMPLEMENTATION

(1) A participant or alternate payee must submit a certified copy of a court judgment, decree, or order containing a proposed family law order (FLO) to the board for approval. The board ~~may delegate~~ has delegated authority for approval of a proposed FLO to the executive director of TRS.

(2) ~~No FLO is effective prior to October 1, 1993. The effective date for a required initiation or change in a type or form of benefit, option, payment, or beneficiary designation will be the date the participant properly executes and files the appropriate corresponding form with the board. Unless a later date is specified in the proposed FLO, the effective date for purposes of allocating benefits and payments in progress is the first day of the month following receipt of a certified copy of the FLO.~~

(3) ~~Beginning on the appropriate effective date, payments to the participant, if any, will be adjusted as directed in the proposed FLO and payments to be received by the alternate payee(s), if any, will be retained by the board. If the proposed FLO is approved, retained payments will be paid to the alternate payee(s); if not approved, to the participant. For purposes of allocating a lump sum payment, a certified copy of the FLO must be received before the payment is mailed or otherwise conveyed to the participant.~~

(4) through (8) remain the same.

AUTH: 19-20-201, MCA

IMP: 19-20-305, MCA

Reason: The changes are intended to eliminate extraneous verbiage, and to clarify that the effective date of a Family Law Order cannot be prior to the first of the month following the month of receipt of the Family Law Order by the Teachers' Retirement System, and to comply with the amendments included in HB 81.

4. The rule proposed for repeal is as follows:

2.44.513 WITHHOLDING OF GROUP INSURANCE PREMIUM FROM RETIREMENT BENEFIT located at page 2-3266, Administrative Rules of Montana. This rule would not be replaced.

AUTH: 19-20-201, MCA

IMP: 19-4-1101, MCA

Reason: This rule is no longer necessary because changes in HB 81 (2007) clarified that each employer must use the TRS online withholding system.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: David L. Senn, Teachers' Retirement System, P.O. Box 200139, Helena, Montana 59620; telephone (406) 444-3376; fax (406) 444-2641; or e-mail dsenn@mt.gov, and must be received no later than 5:00 p.m., September 20, 2007.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to David L. Senn at the above address no later than 5:00 p.m., September 20, 2007.

7. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those has been determined to be 3,890 persons based on the total active, inactive, and retired membership of the Teachers' Retirement System.

8. The Teachers' Retirement System maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or

may be made by completing a request form at any rules hearing held by the Teachers' Retirement System.

9. An electronic copy of this Proposal Notice is available through the Department of Administration's web site at <http://doa.mt.gov/AdministrativeRules.asp>. The department strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsors were notified by e-mail on July 16, 2007, that the agency has begun work on the proposed rules.

/s/ Dal Smilie
Dal Smilie
Rule Reviewer

/s/ David L. Senn
David L. Senn
Executive Director
Teachers' Retirement System

Certified to the Secretary of State August 13, 2007.